

ESTTA Tracking number: **ESTTA450490**

Filing date: **01/10/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203271
Party	Plaintiff Babycakes NYC, Inc.
Correspondence Address	JOHN H BARKLEY BARKLEY LAW GROUP APC 549 ORANGE AVE CORONADO, CA 92118 UNITED STATES jbarkley@barkleylawgroup.com
Submission	Other Motions/Papers
Filer's Name	John H. Barkley
Filer's e-mail	jbarkley@barkleylawgroup.com
Signature	/John Barkley/
Date	01/10/2012
Attachments	Motion to Suspend 8936.pdf ( 3 pages )(83844 bytes ) Exhibit A.pdf ( 8 pages )(111445 bytes ) Exhibit B.pdf ( 2 pages )(51649 bytes ) Exhibit C.pdf ( 11 pages )(1083502 bytes ) Exhibit D.pdf ( 10 pages )(795527 bytes )

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Attorney for Opposer Babycakes NYC, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of the trademark application Serial No. 85328936  
For the mark: "Babycakes"  
Published in the Official Gazette on: November 8, 2011

BABYCAKES NYC, INC.  
Opposer

v.

SELECT BRANDS, INC.  
Applicant

Trademark Application  
Mark: BABYCAKES  
Serial No.: 85328936  
Filed: May 24, 2011  
Published: November 8, 2011  
Opposition No. 91203271

MOTION TO SUSPEND AND BRIEF IN SUPPORT OF MOTION TO SUSPEND OPPOSITION  
PROCEEDING IN VIEW OF PENDING APPEAL  
PURSUANT TO 37 CFR § 2.117

Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202

Sir:

Opposer Babycakes NYC, Inc., hereby moves the board to suspend this proceeding pending the outcome of the *Ex Parte* Appeal of the Final Refusal to Register Application # 85214746.

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**PROCEDURAL BACKGROUND**

On January 5, 2012, Babycakes NYC, Inc. a New York Corporation, 248 Broome Street, New York, New York 10002 (“Babycakes NYC” or “Opposer”), filed a Notice of Opposition to the registration filed by Select Brands, Inc. (“Select Brands” or “Applicant”) for the mark BABYCAKES, shown in Application Serial No. 85328936. *See* Exh. “A”. Concurrent to the opposition of the Select Brands mark, Babycakes NYC is prosecuting its own application to register BABYCAKES with the United States Patent Office (“USPTO”), assigned Application Serial No. 85214746. On November 21, 2011, Babycakes NYC, Inc. timely filed a notice of appeal from the Final Refusal to Register Application # 85214746. *See* Exh. “B”. The Babycakes NYC application was filed prior to the Select Brands application and claims a prior date of use in interstate commerce. *See* Exhs. “C” & “D”. The respective applications request registration of marks that are essentially identical. Babycakes NYC claims the use of the mark “Babycakes” to identify its retail bakery shops whereas Select Brands claims a use of the mark “Babycakes” in connection with “electric cookware, namely, cupcake makers, donut hole makers, donut makers, waffle makers, small pie makers, pie on a stick makers, whoopie pie makers, slow cookers, brownie makers, cookie makers, cake pop makers and cake makers.”

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**ARGUMENT**

Under 37 CFR § 2.117(a), “whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties are engaged in. . . another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of. . . the other Board proceeding.” *E.g., The Tamarkin Co. v. Seaway Food Town Inc.*, 34 USPW2d 1587, 1592 (TTAB 1995) (granting a motion to suspend an opposition proceeding pending the outcome of an *ex parte* prosecution). Babycakes NYC, Inc. currently owns the common law trademark “Babycakes”. *See* Exh. “C”. If Babycakes NYC, Inc. is successful in prosecuting its *Ex Parte* appeal and registration, opposer’s mark would predate applicant’s mark in both priority of use and application. Registration of a mark with the USPTO carries a presumption that the registrant owns said mark. 15 U.S.C. § 1057(b). Such a presumption would necessarily affect legal analyses at the very foundation of this opposition.

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1 **CONCLUSION**

2 Babycakes NYC, Inc. respectfully requests that the opposition to the Select Brands application  
3 be suspended pursuant to 37 CFR § 2.117 pending the outcome of Application 85214746.  
4

5 Respectfully submitted,

6 Dated: January 10, 2012

**JOHN H. BARKLEY**

7  
8 By: /John Barkley/\_\_\_\_\_  
9 John H. Barkley, Esq.  
10 Attorney for Opposer Babycakes NYC, Inc.  
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ESTTA Tracking number: **ESTTA449586**

Filing date: **01/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Babycakes NYC, Inc.
Granted to Date of previous extension	01/07/2012
Address	248 Broome St. New York, NY 10002 UNITED STATES
Attorney information	John H. Barkley Barkley Law Group 549 Orange Ave Coronado, CA 92118 UNITED STATES jbarkley@barkleylawgroup.com Phone:619-437-0031

### Applicant Information

Application No	85328936	Publication date	11/08/2011
Opposition Filing Date	01/05/2012	Opposition Period Ends	01/07/2012
Applicant	SELECT BRANDS, INC. 10817 Renner Blvd. Lenexa, KS 66219 UNITED STATES		

### Goods/Services Affected by Opposition

Class 011. First Use: 2009/12/01 First Use In Commerce: 2009/12/01


All goods and services in the class are opposed, namely: Electric cookware in the nature of electric baking appliances, namely, cupcake makers, donut hole makers, donut makers, waffle makers, small pie makers, pie on a stick makers, whoopie pie makers, slow cookers, brownie makers, cookie makers, cake pop makers and cake makers

### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	

### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85214746	Application Date	01/11/2011
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BABYCAKES NYC		
Design Mark			
Description of Mark	The mark consists of the stylized letters "babycakes NYC" in the color brown, and a small depiction of a pastry in the colors brown, white, and pink.		
Goods/Services	Class 035. First use: 2005/03/23 First Use In Commerce: 2005/04/13 Retail bakery shops		

Related Proceedings	Ex Parte Appeal of Final Refusal of Application # 85214746
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Attachments	85214746#TMSN.jpeg ( 1 page )( bytes ) Notice of Opp 8936.pdf ( 6 pages )(114829 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John Barkley/
Name	John H. Barkley
Date	01/05/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of the trademark application Serial No. 85328936

For the mark: “Babycakes”

Published in the Official Gazette on: November 8, 2011

BABYCAKES NYC, INC.

Opposer

v.

SELECT BRANDS, INC.

Applicant

Trademark Application

Mark: BABYCAKES

Serial No.: 85328936

Filed: May 24, 2011

Published: November 8, 2011

Opposition No.: \_\_\_\_\_

NOTICE OF OPPOSITION

Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202

Sir:

Babycakes NYC, Inc. a New York Corporation, 248 Broome Street, New York, New York 10002 (“Babycakes NYC” or “Opposer”) believes that it will be damaged by registration by Select Brands, Inc. (“Select Brands” or “Applicant”) of the mark BABYCAKES shown in Application Serial No. 85328936 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Applicant filed a trademark application assigned Application Serial No. 85328936 in the United States Patent and Trademark Office (“USPTO”) on May 24, 2011. To register the mark BABYCAKES (“Applicant’s Mark”) for use in connection with “Electric cookware, namely, cupcake makers, donut hole makers, donut makers, waffle makers, small pie makers, pie on a stick makers, whoopie pie makers, slow cookers, brownie makers, cookie makers, cake pop makers and cake makers.”

2. The application filed by Applicant was based on Applicant's alleged use of Applicant's Mark in commerce on or before December 1, 2009.
3. The application for Applicant's Mark was published for opposition in the *Official Gazette* on November 8, 2011. On November 29, 2011, Opposer timely filed a 30-day Request for Extension of Time to Oppose Applicant's Mark, which was granted the same day.
4. Babycakes NYC, Inc. has operated retail bakeries under the name "Babycakes NYC" since August 2005. In 2006, the Babycakes NYC, Inc. bakery began shipping its products nationwide. The logo used by Babycakes NYC, Inc. is attached hereto as Exhibit "A" and consists of brown, stylized, all-lower-case lettering, with a cupcake design in pink, brown, and white.
5. Opposer has created a famous brand under the name "Babycakes NYC". Opposer's founder and president has appeared on nationally-televised programs, including twice on "The Martha Stewart Show," NBC's "Nightline," nationally-broadcast radio programs, the cover story for Inc. Magazine July 2008 edition, and makes appearances on nationally televised or radio broadcasted programs approximately (12) times annually. Each of these appearances are in connection with or to promote the Babycakes brand. This was true even before Applicant began using the name "babycakes" in commerce. Babycakes has also been mentioned in pop culture, including by actor Zach Galifinakis, star of the feature films "The Hangover," "The Hangover Part II," "Due Date," "Puss in Boots" and "Disney's The Muppets" declared his affinity for Babycakes NYC in a television interview on the nationally-televised program "Jimmy Kimmel Live." Babycakes NYC has also been featured on the internet newsletter GOOP, authored by Oscar-winning Actress Gwyneth Paltrow. The Babycakes NYC brand is a nationwide phenomenon.



6. Opposer has experienced numerous complaints, questions, and requests from consumers directed to Opposer's locations on a regular basis since Applicant began selling its goods under the "babycakes" name. Consumers who purchase Applicant's products direct complaints to Opposer's telephone lines and e-mail addresses. Consumers have asked Opposer's employees for assistance in using Applicant's electric cupcake and/or cake makers with certain recipes. Consumers have contacted Opposer's locations seeking the "owner's manual" for Applicant's goods. This actual confusion between Applicant's logo, and Opposer's brand is strong evidence of a likelihood of confusion under Section 2(d).
7. Applicants' Mark is essentially identical to that of Opposer. The logo that Applicant supplied as its specimen consists of brown all-lower-case stylized letters of the word "babycakes" and contains several pastel colors, including pink. Therefore a consumer is likely to recognize Applicant's mark on its goods as emanating from Opposer's business.
8. Applicant's claimed goods and services include "Electric cookware in the nature of electric baking appliances, namely, cupcake makers, donut hole makers, donut makers, waffle makers, small pie makers, pie on a stick makers, whoopie pie makers, slow cookers, brownie makers, cookie makers, cake pop makers and cake makers." Opposer operates (3) retail bakeries famous for selling baked sweets including cupcakes, donuts, cakes, cookies, and other baked sweets. Opposer ships its goods nationwide direct to customers. Opposer also has caused (2) cookbooks to be published. A consumer is likely to believe that the cookbook is meant to be used with the electric pop makers. Indeed, in June 2011, Applicant published a cookbook also titled "Babycakes" for use with its cookware.
9. Applicant represents itself in marketing materials as "the One and Only Original Babycakes." Such statement cannot be reconciled with any version of the truth.

10. Applicant and Opposer largely market through use of the World Wide Web. Several internet resellers, including Amazon.com, even sell Applicant's cookware directly alongside Opposer's cookbooks. Therefore Applicant's products travel in many of the same channels of trade as goods distributed by Opposer.
11. Applicant relies on claimed ownership of Trademark Reg. No. 3,788,636. A petition for cancellation for said mark has been filed by Opposer and is also pending.
12. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of 15 U.S.C. §§1052 (likelihood of confusion), 1125(c) (Dilution), and 1125(a) (Passing Off) of the Lanham Act, and Opposer would be damaged thereby.
13. WHEREFORE, Opposer respectfully requests that registration of the mark shown in Application Serial No. 85328936 be REFUSED and that this Opposition be SUSTAINED in favor of Opposer.

DATED: January 5, 2012

/John Barkley/

JOHN H. BARKLEY  
BARKLEY LAW GROUP, APC  
A Professional Law Corporation  
549 Orange Avenue  
Coronado, California 92118  
Tel: 619-437-0031  
Fax: 619-437-1307

Attorney for Opposer  
Babycakes NYC, Inc.

# Exhibit – A



Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA442118**

Filing date: **11/21/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application Serial No.	85214746
Applicant	BabyCakes NYC, Inc.

**Notice of Appeal**

Notice is hereby given that BabyCakes NYC, Inc. appeals to the Trademark Trial and Appeal Board the refusal to register the mark depicted in Application Serial No. 85214746.

The refusal to register has been appealed as to the following class of goods/services:

- Class 035. First Use: 2005/03/23 First Use In Commerce: 2005/04/13  
All goods and services in the class are appealed, namely: Retail bakery shops

Respectfully submitted,  
/JOHN BARKLEY/  
11/21/2011

**JOHN H. BARKLEY**

**JOHN H. BARKLEY, ESQ.**

**549 Orange Ave**

**Coronado, CA 92101-5643**

**UNITED STATES**

**[jbarkley@barkleylawgroup.com](mailto:jbarkley@barkleylawgroup.com)**

**6194370031**



# Trademark/Service Mark Application, Principal Register

## TEAS Plus Application

Serial Number: 85214746

Filing Date: 01/11/2011

**NOTE:** Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
<b>TEAS Plus</b>	<b>YES</b>
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="\\TICRS\EXPORT11\IMAGEOUT 11\852147\85214746\xml1\FTK0002.JPG">\\TICRS\EXPORT11\IMAGEOUT 11\852147\85214746\xml1\FTK0002.JPG</a>
<b>*SPECIAL FORM</b>	YES
<b>USPTO-GENERATED IMAGE</b>	NO
<b>LITERAL ELEMENT</b>	babycakes NYC
<b>*COLOR MARK</b>	YES
<b>*COLOR(S) CLAIMED (If applicable)</b>	The color(s) brown, white, and pink is/are claimed as a feature of the mark.
<b>*DESCRIPTION OF THE MARK (and Color Location, if applicable)</b>	The mark consists of the stylized letters "babycakes NYC" in the color brown, and a small depiction of a pastry in the colors brown, white, and pink.
<b>PIXEL COUNT ACCEPTABLE</b>	YES
<b>PIXEL COUNT</b>	944 x 281
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	BabyCakes NYC, Inc.
<b>*STREET</b>	248 Broome Street

<b>*CITY</b>	New York
<b>*STATE</b> (Required for U.S. applicants)	New York
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b> (Required for U.S. applicants only)	10002
<b>PHONE</b>	2545372204
<b>EMAIL ADDRESS</b>	jbarkley@barkleylawgroup.com
<b>LEGAL ENTITY INFORMATION</b>	
<b>*TYPE</b>	CORPORATION
<b>* STATE/COUNTRY OF INCORPORATION</b>	New York
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>*INTERNATIONAL CLASS</b>	035
<b>IDENTIFICATION</b>	Retail bakery shops
<b>*FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 03/23/2005
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 04/13/2005
<b>SPECIMEN FILE NAME(S)</b>	
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<b>CONVERTED PDF FILE(S)</b> (1 page)	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\852\147\85214746\xml1\FTK0005.JPG</a>



<b>SPECIMEN DESCRIPTION</b>	Employee Uniform items and website usage of the stylized "babycakes NYC" logo
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>*TRANSLATION (if applicable)</b>	
<b>*TRANSLITERATION (if applicable)</b>	
<b>*CLAIMED PRIOR REGISTRATION (if applicable)</b>	
<b>*CONSENT (NAME/ LIKENESS) (if applicable)</b>	
<b>*CONCURRENT USE CLAIM (if applicable)</b>	
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	John H. Barkley
<b>ATTORNEY DOCKET NUMBER</b>	BabyCakes TM application 001
<b>FIRM NAME</b>	John H. Barkley, Esq.
<b>STREET</b>	1080 Park Blvd. Ste. 1302
<b>CITY</b>	San Diego
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	92101
<b>PHONE</b>	2545372204
<b>EMAIL ADDRESS</b>	jbarkley@barkleylawgroup.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>CORRESPONDENCE INFORMATION</b>	
<b>*NAME</b>	John H. Barkley
<b>FIRM NAME</b>	John H. Barkley, Esq.
<b>*STREET</b>	1080 Park Blvd. Ste. 1302
<b>*CITY</b>	San Diego
<b>*STATE (Required for U.S.)</b>	California

applicants)	
*COUNTRY	United States
*ZIP/POSTAL CODE	92101
PHONE	2545372204
*EMAIL ADDRESS	jbarkley@barkleylawgroup.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
<b>SIGNATURE INFORMATION</b>	
* SIGNATURE	/John H. Barkley/
* SIGNATORY'S NAME	John H. Barkley
* SIGNATORY'S POSITION	Attorney of record, California bar member
* DATE SIGNED	01/11/2011

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## Trademark/Service Mark Application, Principal Register

### TEAS Plus Application

**Serial Number: 85214746**

**Filing Date: 01/11/2011**

#### To the Commissioner for Trademarks:

**MARK:** babycakes NYC (stylized and/or with design, see [mark](#))

The literal element of the mark consists of babycakes NYC.

The color(s) brown, white, and pink is/are claimed as a feature of the mark. The mark consists of the stylized letters "babycakes NYC" in the color brown, and a small depiction of a pastry in the colors brown, white, and pink.

The applicant, BabyCakes NYC, Inc., a corporation of New York, having an address of  
248 Broome Street  
New York, New York 10002  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

**For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 035: Retail bakery shops

In International Class 035, the mark was first used at least as early as 03/23/2005, and first used in commerce at least as early as 04/13/2005, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Employee Uniform items and website usage of the stylized "babycakes NYC" logo.

**Original PDF file:**

[spec-1-2061699468-110931918\\_.SPECIMEN\\_A.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

**Original PDF file:**

[spec-1-2061699468-110931918\\_.SPECIMEN\\_B.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

**Original PDF file:**

[spec-1-2061699468-110931918\\_.SPECIMEN\\_C.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

The applicant's current Attorney Information:

John H. Barkley of John H. Barkley, Esq.

1080 Park Blvd. Ste. 1302

San Diego, California 92101

United States

The attorney docket/reference number is BabyCakes TM application 001.

The docket/reference number is BabyCakes TM application 001.

The applicant's current Correspondence Information:

John H. Barkley

John H. Barkley, Esq.

1080 Park Blvd. Ste. 1302

San Diego, California 92101

2545372204(phone)

jbarkley@barkleylawgroup.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /John H. Barkley/ Date Signed: 01/11/2011

Signatory's Name: John H. Barkley

Signatory's Position: Attorney of record, California bar member

RAM Sale Number: 8988

RAM Accounting Date: 01/11/2011

Serial Number: 85214746

Internet Transmission Date: Tue Jan 11 12:12:58 EST 2011

TEAS Stamp: USPTO/FTK-206.169.94.68-2011011112125830

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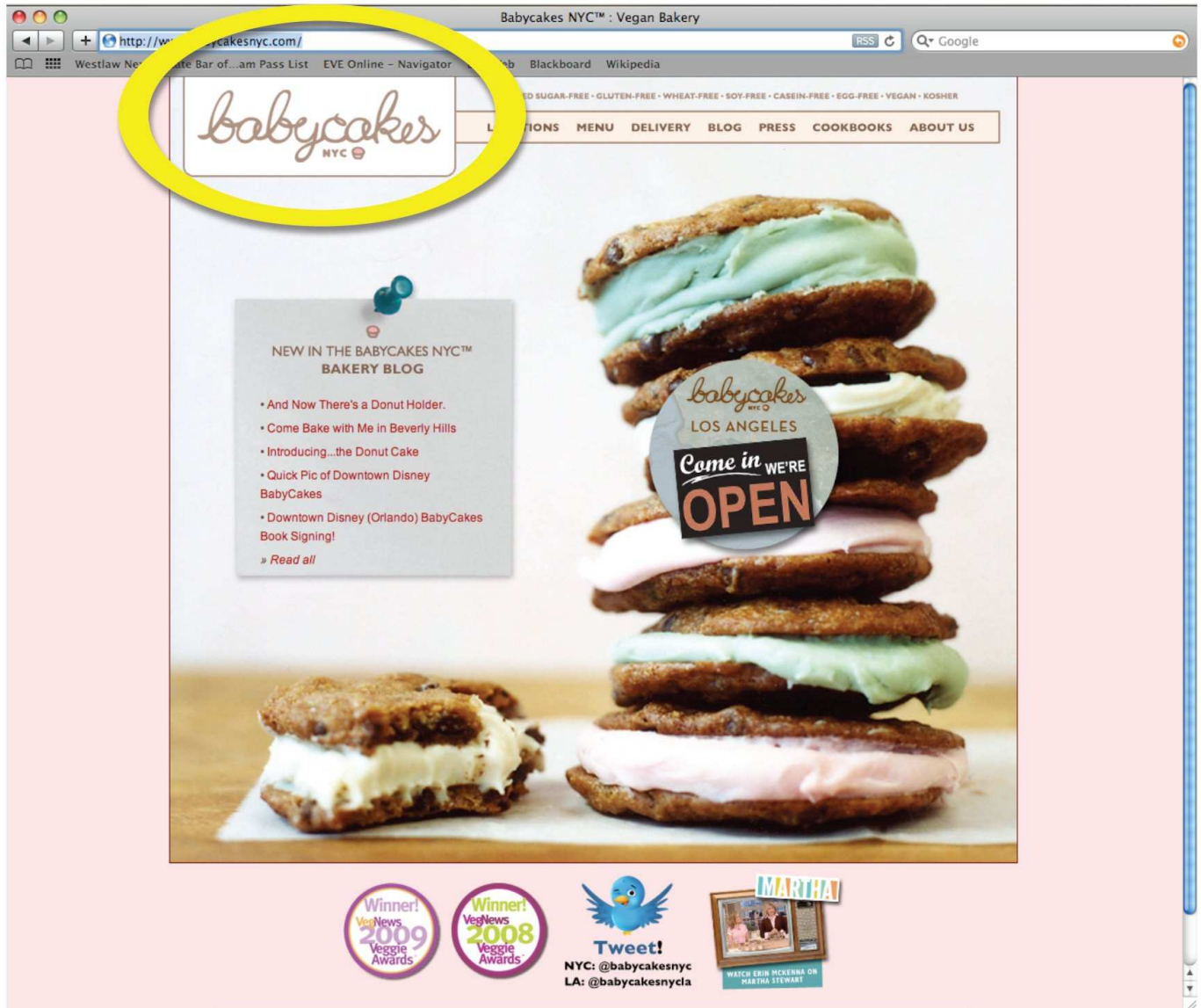
babycakes  
NYC 

SPECIMEN "A" BAKERY EMPLOYEE "HAT" UNIFORM ITEM





SPECIMEN "B" TRADEMARK USE TO IDENTIFY WEBSITE  
(Trademark is circled for ease of identification)





SPECIMEN "C" – BAKERY EMPLOYEE "APRON" UNIFORM ITEM  
(Trademark is circled for ease of identification)



# Trademark/Service Mark Application, Principal Register

Serial Number: 85328936

Filing Date: 05/24/2011

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85328936
<b>MARK INFORMATION</b>	
<b>*MARK</b>	<a href="#">BABYCAKES</a>
<b>STANDARD CHARACTERS</b>	YES
<b>USPTO-GENERATED IMAGE</b>	YES
<b>LITERAL ELEMENT</b>	BABYCAKES
<b>MARK STATEMENT</b>	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
<b>*OWNER OF MARK</b>	SELECT BRANDS, INC.
<b>*STREET</b>	10817 Renner Blvd.
<b>*CITY</b>	Lenexa
<b>*STATE (Required for U.S. applicants)</b>	Kansas
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE (Required for U.S. applicants only)</b>	66219
<b>LEGAL ENTITY INFORMATION</b>	
<b>TYPE</b>	corporation

<b>STATE/COUNTRY OF INCORPORATION</b>	Kansas
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
<b>INTERNATIONAL CLASS</b>	011
<b>* IDENTIFICATION</b>	Electric cookware, namely, cupcake makers, donut hole makers, donut makers, waffle makers, small pie makers, pie on a stick makers, whoopie pie makers, slow cookers, brownie makers, cookie makers, cake pop makers and cake makers
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 12/01/2009
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 12/01/2009
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<b>SPECIMEN DESCRIPTION</b>	image of the mark as used by the Applicant on the goods
<b>ADDITIONAL STATEMENTS SECTION</b>	
<b>PRIOR REGISTRATION(S)</b>	The applicant claims ownership of U.S. Registration Number(s) 3788636.
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Michael Elbein
<b>ATTORNEY DOCKET NUMBER</b>	2450.118; Dkt. 43025
<b>FIRM NAME</b>	HOVEY WILLIAMS LLP
<b>STREET</b>	10801 Mastin Blvd., Suite 1000
<b>CITY</b>	Overland Park
<b>STATE</b>	Kansas

<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	66210
<b>PHONE</b>	913-647-9050
<b>FAX</b>	913-647-9057
<b>OTHER APPOINTED ATTORNEY</b>	John M. Collins, Thomas H. Van Hoozer, Thomas B. Luebbering, Andrew G. Colombo, Scott R. Brown, Tracy L. Bornman, Michael B. Hurd, Joan O. Herman, Kameron D. Kelly, Gregory J. Skoch, Cheryl L. Burbach, Jennifer C. Bailey, Randall W. Schwartz, Christopher Logan, Brandon J. Warner, Crissa A. Cook, Matthew Walters, Dianne M. Smith-Misemer, Paul J. Walker and Adam C. Rehm
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Michael Elbein
<b>FIRM NAME</b>	HOVEY WILLIAMS LLP
<b>STREET</b>	10801 Mastin Blvd., Suite 1000
<b>CITY</b>	Overland Park
<b>STATE</b>	Kansas
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	66210
<b>PHONE</b>	913-647-9050
<b>FAX</b>	913-647-9057
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>FEE PER CLASS</b>	325
<b>*TOTAL FEE DUE</b>	325
<b>*TOTAL FEE PAID</b>	325
<b>SIGNATURE INFORMATION</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">hw_7043171130-161333827_.43025_Executed_AU_App_-_Decl_Only.pdf</a>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\853\289\85328936\xml1\APP0005.JPG</a>
<b>SIGNATORY'S NAME</b>	W. Eric Endres

<b>SIGNATORY'S POSITION</b>	Vice President Marketing
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## Trademark/Service Mark Application, Principal Register

**Serial Number: 85328936**

**Filing Date: 05/24/2011**

### To the Commissioner for Trademarks:

**MARK:** BABYCAKES (Standard Characters, see [mark](#))

The literal element of the mark consists of BABYCAKES.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, SELECT BRANDS, INC., a corporation of Kansas, having an address of  
10817 Renner Blvd.

Lenexa, Kansas 66219

United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 011: Electric cookware, namely, cupcake makers, donut hole makers, donut makers, waffle makers, small pie makers, pie on a stick makers, whoopie pie makers, slow cookers, brownie makers, cookie makers, cake pop makers and cake makers

In International Class 011, the mark was first used at least as early as 12/01/2009, and first used in commerce at least as early as 12/01/2009, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) image of the mark as used by the Applicant on the goods.

**Original PDF file:**

[spec-7043171130-161333827\\_.43025\\_AU\\_Specimen.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

**Original PDF file:**

[spec-1-7043171130-161333827\\_.43025\\_AU\\_Specimen\\_2.pdf](#)

**Converted PDF file(s)** (1 page)

[Specimen File1](#)

The applicant claims ownership of U.S. Registration Number(s) 3788636.

The applicant's current Attorney Information:

Michael Elbein and John M. Collins, Thomas H. Van Hoozer, Thomas B. Luebbering, Andrew G. Colombo, Scott R. Brown, Tracy L. Bornman, Michael B. Hurd, Joan O. Herman, Kameron D. Kelly, Gregory J. Skoch, Cheryl L. Burbach, Jennifer C. Bailey, Randall W. Schwartz, Christopher Logan,

Brandon J. Warner, Crissa A. Cook, Matthew Walters, Dianne M. Smith-Misemer, Paul J. Walker and Adam C. Rehm of HOVEY WILLIAMS LLP

10801 Mastin Blvd., Suite 1000

Overland Park, Kansas 66210

United States

The attorney docket/reference number is 2450.118; Dkt. 43025.

The applicant's current Correspondence Information:

Michael Elbein

HOVEY WILLIAMS LLP

10801 Mastin Blvd., Suite 1000

Overland Park, Kansas 66210

913-647-9050(phone)

913-647-9057(fax)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

**Original PDF file:**

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**Converted PDF file(s)** (1 page)

[Signature File1](#)

Signatory's Name: W. Eric Endres

Signatory's Position: Vice President Marketing

RAM Sale Number: 3402

RAM Accounting Date: 05/25/2011

Serial Number: 85328936

Internet Transmission Date: Tue May 24 16:37:43 EDT 2011

TEAS Stamp: USPTO/BAS-70.43.171.130-2011052416374305

9097-85328936-48035c44f357da484ff6b8af19

e6fdfe2ff-DA-3402-20110524161333827974

# BABYCAKES





All Products

Cupcake Makers

Cake Pop Makers

Donut Makers

» Whoopie Pie Makers

Accessories

Shopping Cart

Register Your Product



## WH-24

Babycakes Whoopie Pie Maker

\$29.99

Overview

Specifications

Owner's Manual

### A Light and Fluffy Snack

With the Babycakes whoopie pie maker you'll create delicious, cream-filled whoopie pies right at home. Bake 12 fluffy whoopie pie halves - enough for 6 complete whoopie pies - in just a few minutes. Add your favorite flavored filling, sprinkle on some powdered sugar, and you'll be enjoying delightfully sweet whoopie pies in no time! The non-stick coating makes baking and clean up fun and easy. The Babycakes whoopie pie maker comes complete with all the accessories you need to bake and fill whoopie pies. The manual includes a variety of tips and recipes that will help you get the most out of this great product. The whoopie pie maker features power and ready lights, convenient cord wrap, latching handle and it comes with a convenient wire cooling rack.

Quantity

Availability: In stock

Add

### Customer Reviews

★☆☆☆☆ 1 out of 5 (based on 1 review)

Read Reviews » Write a Review »

☒ Register Your Product »

**APPLICANT: Select Brands, Inc.**  
**MARK: BABYCAKES**

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true; and that all statements made on information and belief are believed to be true.

**Signature Section:**

Signature: W. Eric Endres Date Signed: MAY 16, 2011  
Signatory's Name: W. Eric Endres  
Signatory's Position: Vice President Marketing